

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #2	CCRB Case #: 201807211	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/31/2018 1:07 AM	Location of Incident: Pennsylvania Avenue and Glenmore Avenue	Precinct: 75	18 Mo. SOL 2/29/2020	EO SOL 2/29/2020	
Date/Time CV Reported Fri, 08/31/2018 1:56 AM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Fri, 08/31/2018 1:56 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Reyes	31869	955373	075 PCT
2. POM Bryan Scheblein	26121	955457	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Bryan Scheblein	Abuse: Police Officer Bryan Scheblein questioned § 87(2)(b) [REDACTED]	
B.POM Joseph Reyes	Abuse: Police Officer Joseph Reyes questioned § 87(2)(b) [REDACTED]	
C.POM Bryan Scheblein	Abuse: Police Officer Bryan Scheblein searched § 87(2)(b) [REDACTED] s bag.	
D.POM Joseph Reyes	Abuse: Police Officer Joseph Reyes frisked § 87(2)(b) [REDACTED]	
§ 87(4-b), § 87(2)(g) [REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	

Case Summary

On August 31, 2018, Sgt. Thomas Turner of PSA 2 reported this complaint to the CCRB via the Call Processing System on behalf of § 87(2)(b). He also filed a duplicate complaint on § 87(2)(b)'s behalf with IAB via telephone on that date. The duplicate complaint was forwarded to the CCRB on September 7, 2018 via IAB log #2018-34617 (See Board Review #1: Intake Log).

At approximately 1:07 a.m. on August 31, 2018, § 87(2)(b) was approached at the intersection of Pennsylvania Avenue and Glenmore Avenue in Brooklyn by Police Officer Joseph Reyes and Police Officer Bryan Scheblein of the 75th Precinct. The officers asked § 87(2)(b) where he was coming from (**Allegations A and B: Abuse of Authority – Question**, § 87(2)(g)). Police Officer Scheblein then took a backpack from § 87(2)(b) and searched through it (**Allegation C: Abuse of Authority – Search**, § 87(2)(g)). Police Officer Reyes then frisked § 87(2)(b) (**Allegation D: Abuse of Authority – Frisk**, § 87(2)(g)). The officers did not find anything in § 87(2)(b)'s bag or on his person. The officers released § 87(2)(b) without arresting him or issuing him a summons.

§ 87(4-b), § 87(2)(g)

Both Police Officer Scheblein and Police Officer Reyes recorded this incident on their body-worn cameras. The footage was attached in IAs #22 and #23 (See Board Review #02-03: Video Footage) and summarized in IA #26 (See Board Review #04: Video Summary). Relevant portions of the videos have also been attached in the relevant sections below. No other video footage was found for this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Joseph Reyes questioned § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Bryan Scheblein questioned § 87(2)(b)

§ 87(2)(b) provided a telephone statement on September 5, 2018 (See Board Review #05: Telephone Statement). He was interviewed at the CCRB on September 17, 2018. Police Officer Scheblein was interviewed at the CCRB on October 19, 2018. Police Officer Reyes was interviewed on November 7, 2018.

It is undisputed that Police Officer Reyes and Police Officer Scheblein approached § 87(2)(b) on the street. During the interaction, Police Officer Scheblein searched § 87(2)(b)'s backpack and Police Officer Reyes frisked § 87(2)(b)'s left pants pocket. § 87(2)(b) was not arrested or issued any summonses as a result of this interaction.

§ 87(2)(b) stated that at the time of the incident, he had just exited the Liberty Avenue subway station in Brooklyn and was walking south along Pennsylvania Avenue. He was carrying a backpack with him that contained food and a sweater. § 87(2)(b) was by himself at the time. He denied stopping anywhere between when he exited the subway station and when Police Officer Reyes and Police Officer Scheblein approached him. He denied speaking to or otherwise interacting with any other civilians during that period. When § 87(2)(b) reached the corner of Pennsylvania Avenue and Glenmore Avenue, Police Officer Reyes and Police Officer Scheblein drove up, exited their unmarked vehicle, and walked over to § 87(2)(b). The officers asked § 87(2)(b) where he was coming from and what his name was. § 87(2)(b) became nervous and started shaking in fear. The officers told him to calm down. § 87(2)(b) asked the officers why they were stopping him, but they did not respond. Police Officer Scheblein then took § 87(2)(b)'s bag from him. § 87(2)(b) made no mention of offering the bag to the officers or giving them permission to check it. After he searched the bag, Police Officer Scheblein returned it to § 87(2)(b). He and Police Officer Reyes returned to their vehicle and left. They did not explain to § 87(2)(b) why they stopped him at any point during the interaction.

§ 87(2)(g)
§ 87(2)(b) Both officers stated that they first observed § 87(2)(b) when they stopped their unmarked sedan at a red light. Police Officer Scheblein stated that they were at the intersection of Vermont Street and Liberty Avenue. Police Officer Reyes did not recall where they were. Police Officer Scheblein stated that his and Police Officer Reyes' vehicle was stopped about seventy feet away from § 87(2)(b). Police Officer Reyes did not recall where they were situated relative to § 87(2)(b). Both officers observed § 87(2)(b) standing at the intersection along with a group of several unidentified males while they were stopped at the light. Police Officer Scheblein stated that he saw § 87(2)(b) approach a group of young males who were standing on the corner. § 87(2)(b) spoke to several of these males, but Police Officer Scheblein could not hear what they said to each other. As § 87(2)(b) spoke to the males, he reached into his backpack several times. It appeared to Police Officer Scheblein as if § 87(2)(b) was either putting something into the bag or taking something out, but he did not see if § 87(2)(b) handled any items while reaching into the bag. Police Officer Reyes stated that § 87(2)(b) was standing with a group of unidentified males, but he did not recall what, if anything, they were doing. Police Officer Reyes recalled seeing a backpack, but stated that it was sitting on the ground at an unknown distance from § 87(2)(b) while he was with the males.

Police Officer Scheblein stated that after § 87(2)(b) spoke to the first group, he walked towards a second group of older-looking males standing further down Vermont Street, south of the intersection. § 87(2)(b) also spoke to several of these males. Police Officer Scheblein did not hear these conversations, either. § 87(2)(b) again reached into his bag several times, but Police Officer Scheblein did not see if he handled any objects as he did so. Police Officer Scheblein did not observe § 87(2)(b) exchange any objects or make physical contact with the males in the second group. Police Officer Reyes only recalled seeing one group of individuals at the intersection. After about a minute at the intersection, the red light at the intersection changed and the officers started driving again. As they did so, § 87(2)(b) started walking south on Vermont Street. Police Officer Scheblein stated that § 87(2)(b) was alone, while Police Officer Reyes stated that another individual followed him briefly before breaking off.

Both officers stated that they suspected § 87(2)(b) of engaging in criminal activity based on the behavior that he exhibited at the intersection. Police Officer Scheblein suspected that § 87(2)(b) was trying to sell something illegal to the members of the two groups. He did not know what, specifically § 87(2)(b) might have been selling. Police Officer Reyes cited a general suspicion that § 87(2)(b) was engaged in criminal activity, but he did not suspect § 87(2)(b) of any specific criminal actions. The two officers decided to approach § 87(2)(b) in order to investigate his behavior at the first intersection. Police Officer Scheblein specifically stated that he only intended to ask § 87(2)(b) non-accusatory “Level I” questions. He did not intend to stop or detain § 87(2)(b). Police Officer Reyes did not have any specific investigative actions planned at that point. The officers did not recall if they discussed either their observations of § 87(2)(b) or their intended course of action towards § 87(2)(b) with each other prior to approaching § 87(2)(b).

Police Officer Scheblein stated that § 87(2)(b) walked south on Vermont Street, a one-way street that goes north. As such, Police Officer Scheblein was forced to drive around the block in order to go after § 87(2)(b). He lost sight of § 87(2)(b) while doing so, and had to drive around the area in order to find him again. He caught up to § 87(2)(b) at the intersection of Pennsylvania Avenue and Glenmore Avenue, approximately three blocks from the original intersection. He did not recall how long he lost sight of § 87(2)(b) for, but noted that § 87(2)(b) would have had to have walked at a rapid pace in order to cover three blocks during that time. Police Officer Reyes stated that he and Police Officer Scheblein were able to drive directly after § 87(2)(b) when he left the first intersection, and that they approached him at an unknown intersection about a block south of the first intersection. He did not believe that they lost sight of § 87(2)(b) at any point.

Both officers stated that they exited their vehicle and approached § 87(2)(b) on foot. § 87(2)(b) was breathing heavily at the time. He offered his bag to the officers as they walked up to him. He gave the officers verbal consent to search his bag. Police Officer Reyes subsequently frisked § 87(2)(b) to determine if he was armed.

Neither officer prepared a stop report to document this interaction (See Board Review #06: Stop Report Search). Police Officer Scheblein stated that he did not prepare one because he had intended at the inception of the incident to only ask § 87(2)(b) non-accusatory questions. Police Officer Reyes stated that he simply forgot to prepare a report.

Both officers recorded their interaction with § 87(2)(b) at Pennsylvania Avenue and Glenmore Avenue on their body-worn cameras (See Board Review #02-03: BWC Footage). The footage does not depict any of the events prior to the officers approaching § 87(2)(b). Both officers approached § 87(2)(b) but Police Officer Reyes arrived several seconds before Police Officer Scheblein. He also stood closer to § 87(2)(b) throughout the incident. As a result, his footage more clearly captures the beginning of the officers’ interaction with § 87(2)(b). His recording is 2:48 minutes long and is embedded below.



201807211_20180914_0925_DM.AVI

The video footage shows Police Officer Reyes exit his vehicle and walk up to § 87(2)(b) at 0:25 into the recording. Police Officer Reyes gestures towards § 87(2)(b) with his hands, but because the video’s sound does not engage until 0:30 into the recording, it is unclear if anything is said.

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§ 87(2)(b) is seen holding a backpack in his right hand. Once the sound starts, § 87(2)(b) states that he is coming from work. Police Officer Reyes asks § 87(2)(b) where he works. § 87(2)(b) does not answer, instead asking if he was approached because he is black. Police Officer Reyes denies that § 87(2)(b) was approached because of his race. At 0:35 into the recording, § 87(2)(b) states, "Might as well check me, boss man." Police Officer Reyes asks § 87(2)(b) "What's this?" He then takes the bag from § 87(2)(b)'s hand. § 87(2)(b) states, "Go ahead and check the bag." At 0:45 into the recording, Police Officer Reyes asks § 87(2)(b) again where he works. § 87(2)(b) replies that he works at Rockefeller Center. Police Officer Reyes asks § 87(2)(b) what is inside of his bag. § 87(2)(b) tells him to check the bag. At 1:05 into the recording, Police Officer Reyes asks § 87(2)(b) "What's the matter, man? Why you so out of breath?" § 87(2)(b) does not respond. At 1:15 into the recording, Police Officer Reyes asks § 87(2)(b) "What's your name, sir?" § 87(2)(b) does not say anything in response. Police Officer Reyes repeats the question two more times, but § 87(2)(b) still does not respond. At 1:50 into the recording, § 87(2)(b) starts speaking, but he sounds panicked and his words are not clear. Police Officer Reyes asks, "What are you talking about, sir? Sir, what is your name, I'm asking you." § 87(2)(b) states, § 87(2)(b) § 87(2)(b) Police Officer Reyes asks, § 87(2)(b) Where do you live, sir?" § 87(2)(b) states, "§ 87(2)(b)." At 2:15 into the recording, Police Officer Reyes asks, "Is this your phone?" Police Officer Reyes then reaches down and pats § 87(2)(b)'s waist and thigh.

An officer requires an objective, credible reason to approach an individual and request general information from them. An officer requires a founded suspicion that criminality is afoot in order to ask an individual pointed or accusatory questions. People v. Hollman, 79 N.Y.2d 181 (1992) (See Board Review #07: Legal Reference).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

The officers alleged that they observed § 87(2)(b) interacting with several unidentified individuals at a nearby street corner.

§ 87(2)(g)

Police Officer Scheblein stated that § 87(2)(b) spoke to two distinct groups of people while reaching in and out of his backpack, while Police Officer Reyes stated that § 87(2)(b) interacted with a single group and did not pick up the backpack until after he walked away from this group. Police Officer Scheblein stated that he lost sight of § 87(2)(b) but later caught up with him a few blocks away. Police Officer Reyes stated that they followed § 87(2)(b) for a block without losing sight of him. § 87(2)(g)

§ 87(2)(b) stated that he exited a subway station and immediately walked about a block's distance, at which time the officers approached him. He denied that he interacted with any other civilians prior to the officers' approach. § 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Bryan Scheblein searched § 87(2)(b)'s bag.

It is undisputed that Police Officer Scheblein took possession of § 87(2)(b)'s backpack during the incident. Police Officer Scheblein opened the bag and searched through its contents. He did not remove any items from the bag. After Police Officer Scheblein completed his search, he returned the bag to § 87(2)(b).

§ 87(2)(b) stated that shortly after Police Officer Reyes and Police Officer Scheblein approached him, Police Officer Scheblein took his bag away from him. He made no mention of having given permission to either officer to take or examine the bag. He made no mention of either officer having requested permission to take or examine the bag. Once Police Officer Scheblein had the bag, he reached inside of it and examined its contents. No further searches were conducted on § 87(2)(b) or his belongings.

Police Officer Scheblein and Police Officer Reyes stated that § 87(2)(b) offered his bag to them as they walked up to him. He gave the officers verbal consent to search his bag. Police Officer Scheblein did not recall how § 87(2)(b) phrased his consent, but noted that the consent was to

search the entirety of the bag, rather than specifying any particular parts of it. Police Officer Reyes stated that § 87(2)(b) told the officers either “Check me” or “Check the bag.” Both officers denied that he or Police Officer Reyes had said anything to § 87(2)(b) regarding the bag before § 87(2)(b) offered it. Police Officer Scheblein took the bag and searched it by reaching inside of it. He did not recall what was inside of the bag. He did not find any firearms inside, but he did not recall if there were any other types of illegal items in the bag. Police Officer Reyes stated that he did not see what, if anything, Police Officer Scheblein did with the bag, as his attention was focused on § 87(2)(b). He did not know if Police Officer Scheblein reached into the bag or removed anything from it. He did not learn what was inside of the bag.

Neither officer documented the search of § 87(2)(b)'s bag in a stop report (See Board Review #06: Stop Report Search). Police Officer Scheblein stated that he did not document the search because § 87(2)(b) suggested it to the officers voluntarily. Police Officer Reyes did not prepare a report because he simply forgot to do so.

Police Officer Reyes' body-worn camera footage, attached above, recorded his interaction with § 87(2)(b) including the search. As noted earlier, the footage shows § 87(2)(b) repeatedly asking the officers to “check” him and his “bag.”

An officer may search an individual if they obtain that individual's consent to do so ahead of time. This consent must be voluntary and cannot be obtained through coercion. People v. Mercado, 120 A.D.3d 441 (App. Term, 1st Dept., 2014) (See Board Review #08: Legal Reference).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Allegation (D) Abuse of Authority: Police Officer Joseph Reyes frisked § 87(2)(b)

It is undisputed that Police Officer Reyes frisked § 87(2)(b) by patting the exterior of § 87(2)(b)'s front-right pants pocket. Police Officer Reyes patted an object in § 87(2)(b)'s pocket and asked him if it was a cell phone. Neither the object in § 87(2)(b)'s pocket nor any other items were removed from his person.

§ 87(2)(b) stated that when the officers first approached him, he became nervous and started shaking in fear. The officers told him to calm down. Later, while Police Officer Scheblein was

searching his bag, Police Officer Reyes frisked him by patting both of his thighs. § 87(2)(b) was carrying his cell phone in his front-left pants pocket and his wallet in his front-right pants pocket. He did not have anything else in his pants pockets. Police Officer Reyes patted the outline of the cell phone in § 87(2)(b)'s front-left pants pocket. He asked if the item was a cell phone. § 87(2)(b) confirmed that it was. Police Officer Reyes did not feel any other objects on § 87(2)(b) or pat down any other parts of § 87(2)(b)'s body. Nothing was removed from his person during the incident. § 87(2)(b) made no mention of the officers asking him for consent to frisk or search him, or of giving the officers permission to frisk or search him.

Police Officer Reyes and Police Officer Scheblein both stated that § 87(2)(b) displayed nervous behavior throughout the incident. They explained § 87(2)(b) was breathing heavily and pacing back-and-forth. Police Officer Reyes stated that § 87(2)(b) was fidgeting, while Police Officer Scheblein stated that § 87(2)(b) gestured animatedly with his hands as he spoke. Police Officer Scheblein stated that as he searched through § 87(2)(b)'s bag, § 87(2)(b) started to gradually step away from him. Police Officer Scheblein therefore began to suspect that § 87(2)(b) had deliberately given the bag to the officers and told them to search it because he was trying to draw their attention away from a firearm concealed on his person. He also suspected that § 87(2)(b) might have used the bag to distract the officers, giving him an opportunity to flee while they handled the bag. Police Officer Reyes made no mention of § 87(2)(b) attempting to distance himself from the officers or his bag. § 87(2)(b) did not try to run from the officers at any point. Police Officer Scheblein also stated that § 87(2)(b) spoke in a babbling and incoherent manner during the incident, which he compared to § 87(2)(b) "speaking in tongues." Police Officer Reyes made no mention of § 87(2)(b) speaking in an incoherent manner during the incident.

Police Officer Reyes stated that when he first approached § 87(2)(b) § 87(2)(b) gave permission for him to conduct a "check." He did not recall how § 87(2)(b) phrased this consent, stating that § 87(2)(b) either told Police Officer Reyes, "check me," or, "check the bag." He also stated that after he started speaking to § 87(2)(b) he observed a rectangular bulge underneath § 87(2)(b)'s clothing after PO Scheblein started searching the bag. He did not recall the size of the bulge or where it was on § 87(2)(b)'s person. He suspected, based on the bulge's shape, that it was a cell phone. Police Officer Reyes asked § 87(2)(b) if the object was a cell phone, but § 87(2)(b) did not respond. Police Officer Reyes then frisked § 87(2)(b) by patting the bulge over § 87(2)(b)'s clothing. He denied patting anywhere else on § 87(2)(b)'s body. When he felt the object, he confirmed that it was in fact a cell phone. He did not remove the phone or any other items from § 87(2)(b)'s person.

Police Officer Scheblein stated that § 87(2)(b) gave the officers for permission to check his bag at the start of their interaction. He did not recall how § 87(2)(b) phrased this consent. He made no mention of § 87(2)(b) giving the officers permission to frisk or search his person. Police Officer Scheblein also stated that while he was searching § 87(2)(b)'s bag, he observed Police Officer Reyes frisk § 87(2)(b) by patting one of his pants pockets. He did not mention observing any bulges on § 87(2)(b)'s person at any point during the incident. Police Officer Reyes appeared to have felt an object in § 87(2)(b)'s pocket. Police Officer Scheblein did not see the object at any point and had not been aware of it prior to Police Officer Reyes feeling it. Police Officer Reyes asked § 87(2)(b) what the object was. § 87(2)(b) replied that it was a cell phone. Police Officer

Scheblein did not know if Police Officer Reyes patted any other parts of § 87(2)(b)'s body besides the pocket.

Neither officer documented Police Officer Reyes' frisk in a stop report (See Board Review #06: Stop Report Search). Police Officer Scheblein stated that he did not document the frisk because he did not conduct it himself. Police Officer Reyes did not prepare a report because he simply forgot to do so.

Police Officer Reyes' body-worn camera footage, attached above, recorded his interaction with § 87(2)(b) including the frisk. For the entirety of the video, § 87(2)(b) is heard breathing heavily and panting loudly. He is wearing a t-shirt and shorts. At 1:06 into the recording, Police Officer Reyes asks § 87(2)(b) "What's the matter, man? Why you so out of breath?" § 87(2)(b) does not respond. § 87(2)(b) stands in one place for the duration of the video. At 2:15 into the recording, Police Officer Reyes asks § 87(2)(b) "Is this your phone?" § 87(2)(b) states, "Boss man check me." Police Officer Reyes asks again, "This your phone?" § 87(2)(b) states, "Just check this, they say, 'Fire the guards.' Oh boy." At 2:25 into the recording, Police Officer Reyes leans down and reaches towards § 87(2)(b)'s shorts. This is the first time that § 87(2)(b)'s lower body is seen on the video. Police Officer Reyes states, "Okay, you're spitting in my face" Police Officer Reyes squeezes § 87(2)(b)'s t-shirt at his waistline. He then squeezes the fabric of § 87(2)(b)'s shorts over § 87(2)(b)'s left thigh. There is no visible bulge on the pocket at the time. Police Officer Reyes releases the fabric at 2:35 into the recording. He makes no further contact with § 87(2)(b).

An officer may frisk or search an individual if they obtain that individual's consent to do so ahead of time. This consent must be voluntary and cannot be obtained through coercion. People v. Mercado, 120 A.D.3d 441 (App. Term, 1st Dept., 2014) (See Board Review #08: Legal Reference).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (See Board Review #12: § 87(2)(b)'s CCRB History).
- Police Officer Reyes has been a member of the service for five years and has been a subject in three CCRB complaints and six allegations, one of which was substantiated; in one case:
 - 201708175 involved a substantiated stop allegation. The Board recommended that he receive charges. The NYPD has not yet imposed discipline.

- § 87(2)(g) [REDACTED]
- Police Officer Scheblein has been a member of the service for five years and has been a subject in seven CCRB complaints and sixteen allegations, two of which were substantiated; in one case:
 - 201610413 involved two substantiated frisk allegations. The Board recommended that he receive a command discipline. The NYPD imposed Formalized Training.
 - § 87(2)(g) [REDACTED].

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- As of November 27, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (See Board Review #13: Notice of Claim).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date